United Nations CCPR/C/112/D/1773/2008

International Covenant on Civil and Political Rights

Distr.: General
14 January 2015

Original: English

Human Rights Committee

Communication No. 1773/2008

Views adopted by the Committee at its 112th session (7–31 October 2014)

Submitted by:	Olga Kozulina (represented by counsel)
Alleged victims:	The author's father, Alexander Kozulin
State party:	Belarus
Date of communication:	11 October 2007 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 26 March 2008 (not issued in document form)
Date of adoption of decision:	21 October 2014
Subject matter:	Ill-treatment, arbitrary arrest; conditions of detention; presumption of innocence; fair trial guarantees; defence rights; freedom of assembly
Procedural issues:	Exhaustion of domestic remedies
Substantive issues:	Liberty and security of person; conditions of detention; fair trial; right to participate in a peaceful assembly
Articles of the Covenant:	7; 9; 10; 14 (1), (2) and (3) (b)–(e); 21
Articles of the Optional Protocol:	5 (2) (b)

GE.15-00429 (E)
1500429

Please recycle

Annex

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights (112th session)

concerning

Communication No. 1773/2008*

Submitted by:	Olga Kozulina (represented by counsel)
Alleged victim:	Alexander Kozulin, the author's father
State party:	Belarus
Date of communication:	11 October 2007 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 October 2014,

Having concluded its consideration of communication No. 1773/2008, submitted to the Human Rights Committee by Olga Kozulina under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author is Olga Kozulina, a Belarusian national born in 1980, who claims that her father, Alexander Kozulin, a Belarusian national born in 1955,[1] is a victim of violation, by Belarus, of his rights under articles 7; 9 (1) and (3); 10 (1); 14 (1), (2) and (3) (b)–(e); and 21 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is represented by counsel, Igor Rynkevich.

---

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Christine Chanet, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Victor Manuel Rodriguez-Rescia, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.
The text of an individual opinion by Committee member Cornelis Flinterman is appended to the present Views.

[1] In her initial submission, the author explained that, as her father was imprisoned and in poor health, he was unable to present his case to the Committee, and that the penitentiary administration was making it impossible for him to prepare power of attorney. In March 2009, Mr. Kozulin provided his signed comments to the State party's observations (see para. 7.1 below).

The facts as presented by the author

2.1 Mr. Kozulin is a former Rector of the Belarusian State University and a former Deputy Minister of Education. He became the Chair of the Belarusian Social Democratic Party (Gramada) in March 2005 and a presidential candidate in 2006. Throughout the campaign, he openly criticized the regime in place.

2.2 The National Press Centre was notified[2] of Mr. Kozulin's intention to conduct a press conference and announce his campaign when he was registered as a presidential candidate, on 17 February 2006, and initially he received verbal agreement, which was later retracted. A group of unidentified individuals[3] closed the gates and prevented Mr. Kozulin from entering the building to seek clarifications and hold the conference. An individual used tear gas against one of Mr. Kozulin's supporters; Mr. Kozulin apprehended the assailant and handed him over to the police. However, later on, the police contended that the assailant — a police officer — and two wardens were injured during the events and Mr. Kozulin was accused of hooliganism.

2.3 On 2 March 2006, Mr. Kozulin was apprehended in the hall of the House of the Railway Workers in Minsk when attempting to participate in the All Belarusian People's Assembly as a representative of his party. He was beaten by several unidentified people; one individual grasped his arm and another jumped on his back. The videotape of the events shows a colonel, D.P., approaching Mr. Kozulin, and witnesses testified that the colonel administered a number of punches and kicks to Mr. Kozulin. Four to five individuals then violently threw Mr. Kozulin into a police van, which was driven around the city for an hour. He was placed between the seats with his legs against his head, choking on his own blood. Once at the police station of the Oktyabrsk District in Minsk, he realized that in fact he had been apprehended by the Almaz elite anti-terror unit. He was kept at the station until 5 p.m. when the first session of the All Belarusian People's Assembly ended, for more than seven hours, and could not contact his relatives until the arrival of his lawyer. Being beaten and exasperated, he punched the portrait of the President on a wall and its frame broke.

2.4 A forensic medical examination of 3 March 2006 revealed the existence of a multiple haematomas on Mr. Kozulin's head and bruises on his face and hands; he refused to have the rest of his body examined. A lawyer complained about his ill-treatment to the Procurator's Office; the complaint was rejected on 25 April 2006. Later on, in court, members of the Almaz unit testified that Mr. Kozulin himself hit his head on the ground.

2.5 On 25 March 2006, after participating in a meeting on Freedom Day, Mr. Kozulin walked together with other people towards a police facility, to support several persons detained at protests against electoral fraud, including two of his nephews.[4] They walked peacefully on the sidewalk, but soldiers of the Internal Troops (from the Ministry of Internal Affairs) used physical force, rubber batons, smoke devices and sound grenades, and dispersed the crowd. Later on, near his home, Mr. Kozulin was severely beaten by between five and seven officers in masks and he was brought to the Zavodsky District police office. The same day, the Minister of Internal Affairs announced at a press conference that Mr. Kozulin had caused public disorder; the Procurator's Office issued a similar statement.

2.6 At the Zavodsky District police station, an ambulance was called as Mr. Kozulin complained about pain in his abdomen and his left leg. The doctor found a haematoma at

[2] No dates specified.

[3] As it subsequently transpired, belonging to a Special Purpose Police Unit.

[4] The author claims that Mr. Kozulin did not organize the rally.

the left knee and issued the following diagnosis: "Haematoma in the lower back and the pelvis". At around 10 p.m., officers from the Almaz unit escorted Mr. Kozulin to the Zhodino pretrial detention centre. He was handcuffed during the trip and forced to remain on his knees; his eyes were covered with his ripped hat; his head was pressed against his knees or against a seat. He was repeatedly hit over the head to prevent him from standing up. The handcuffs were very tight and his hands were swollen. In order to intimidate him, officers placed bullets in the chamber of an automatic pistol. Upon arrival, a paramedical official recorded the presence of a bruise 2 cm x 2 cm on his right knee and marks on both hands (due to the tight handcuffs).

2.7 The author further contends that, according to a medical record made on Mr. Kozulin's admittance to the pretrial detention centre, he had bruises on his right knee, on the third finger of his left hand and on the inside of his left knee; he complained about pain in the lumbar region. On 4 April 2006, he underwent a forensic medical examination by State experts. He claimed that he had been kicked by masked individuals all over his body during his arrest on 25 March. Bruises to the third finger of his left hand and his right knee were recorded.

2.8 Only on 26 March 2006, after 19 hours of detention instead of the 12 hours allowed by law, did an investigator inform Mr. Kozulin's family and counsel of his location and the reasons for his arrest.

2.9 The author notes that the manner in which the police used force against her father was cruel and illegitimate. On 12 May 2006, as a result of Mr. Kozulin's complaint of 30 April 2006 regarding the 25 March events, a procurator conducted an inquiry and interrogated several of the officers participating in his arrest and transportation to the police station and the pretrial detention centre but refused to open a criminal case. In July 2006, the Court of the Moscow District in Minsk confirmed that decision.

2.10 On 30 March 2006, a procurator officially charged Mr. Kozulin regarding the events of 17 February, 2 March and 25 March 2006, under articles 339 and 342 of the Criminal Code on hooliganism, and organization of mass events severely breaching public order with clear disrespect of lawful requests by representatives of the State leading to disruption of the functioning of transport and enterprises, and active participation in such acts. On 19 May 2006, his counsel asked the Procurator's Office to release him from custody. On 24 May 2006, the petition was rejected. On 22 June 2006, counsel petitioned the Court of the Moscow District in Minsk to annul the custody, to allow the author to represent her father, and to subpoena witnesses and examine additional evidence. On 28 June 2006, the court rejected the petition.

2.11 During the trial, Mr. Kozulin was held in a cage, which made it difficult for him to communicate with his attorneys. Both the judge and the prosecution repeatedly humiliated him throughout the trial.[5] The trial court limited the access to the courtroom — designed to

[5] In particular, the judge rejected Mr. Kozulin's relatives' petition to pass him a belt. On that occasion, the prosecutor reportedly remarked that the audience would be delighted if Mr. Kozulin was unable to hold his pants. The author claims that bottled water was available in the pretrial detention centre's store but not sold to prisoners. Only after his father's and his lawyer's repeated complaints were detainees allowed to buy water. Mr. Kozulin was unable to bring bottled water to court, and no bottled water was provided to him there despite the heat. On one occasion, he was provided with salted fish and bread before being escorted to court, in his opinion to make him suffer. His health status was affected due to the absence of bottled water during the long hearings. On 11 July 2006, it was very hot and he was feeling unwell but the judge refused to interrupt the trial. Only when he lay down on the bench and explained that he had headaches and vertigo was the trial interrupted. Thereafter, he was allowed to bring bottled water.

hold 50 persons — due to the large number of individuals wishing to follow the trial, even though around ten police officers in civilian clothes were sitting in the room as relatives to the injured parties. Mr. Kozulin's lawyers' request to use a larger room was rejected. Mr. Kozulin's request for the trial to be videotaped was also rejected. The court also rejected as unnecessary several requests to obtain additional evidence, failed to address more than fifty petitions of the defence and refused to call witnesses seen as important for the defence, including eight officials. Of the 20 witnesses whom the defence wished to be called only four were questioned in court. The courts relied on the statements of witnesses and injured parties as obtained during the preliminary investigation. The presiding judge, shortly before the pronouncement of the judgment, ordered the room to be emptied, with the exception of two lawyers, a procurator, a registrar and a few police officers. The cassation appeal court gave rise to similar irregularities: the judges interrupted the statements by the defence; Mr. Kozulin was not allowed to attend although he had not been given a right to a final word by the trial court; and the court refused to accept as evidence the audiotapes of the trial. All that, according to the author, shows that the courts were not objective or impartial.

2.12 On 13 July 2006, the Court of the Moscow District in Minsk found Mr. Kozulin guilty under articles 339 and 342 of the Criminal Code and sentenced him to five and a half years' imprisonment. His lawyers' appeal was rejected by the Minsk City Court on 19 September 2006; the judgment acquired the force of res judicata. The requests for supervisory review to the Chairs of the Minsk City Court and the Supreme Court were rejected on 30 November 2006 and 21 May 2007. Domestic remedies have thus been exhausted.

2.13 On 21 September 2006, Mr. Kozulin was transferred to a colony to serve his sentence. That rapid transfer prevented him from seeing his 75 year-old parents in Minsk, despite the fact that, on 19 September 2006, they had obtained court authorization to see him. On 20 October 2006, Mr. Kozulin started a hunger strike to protest the regime in place in Belarus aiming also to attract attention to the human rights situation in the country. During his hunger strike, his counsel was denied access to him, allegedly because of his state of health, and courts or the penitentiary authorities obstructed visits of foreign diplomats. No independent medical doctors were allowed to visit him, including from the International Committee of the Red Cross. The requests of Mr. Kozulin's relatives to have him examined by an independent doctor were ignored. He was examined only once outside the prison's medical unit, in a penitentiary hospital. At the end of his hunger strike, the care provided to him was limited to the supply of extra food and he was not allowed to receive additional parcels from his relatives.

2.14 Furthermore, Mr. Kozulin was denied normal "social contact with other prisoners". Three prisoners with whom he had some contact were transferred to other penitentiaries. The rest of the prisoners were afraid to talk to him for fear of repercussions. He was also subjected to disciplinary measures that prevented his anticipated release. In addition, he was humiliated during his hunger strike and his walks outside were limited; he was also beaten up by a guard in January 2007.

The complaint

3.1 The author claims a violation of article 7 owing to the fact that, on 2 March 2006, her father was beaten by elite anti-terror unit officers and to the conditions of his transportation to the police station. His lawyer's complaints regarding the use of force against him were rejected. In court, police officers made false or contradictory statements. On 25 March 2006, after the dispersal of the crowd, her father was beaten by special police unit officers while not resisting. Both episodes show, according to the author, that her father is a victim of torture and inhumane and degrading treatment. As a result, her father's rights

under article 21 of the Covenant were also violated, because he was not allowed to participate in a peaceful rally, not organized by him, on 25 March 2006, which was violently dispersed by special troops.

3.2 Mr. Kozulin's arrest of 25 March 2006 was unlawful, his family was informed about his whereabouts only after 19 hours, instead of the 12 hours prescribed by law, and his subsequent pretrial detention was unjustified and sanctioned by a procurator, in violation of article 9, paragraphs 1 and 3, of the Covenant.

3.3 The author claims a violation of article 10 of the Covenant, because of the way he was treated in prison, during his hunger strike and thereafter (see paras. 2.13 and 2.14 above).

3.4 The author claims a violation of article 14, paragraph 1, of the Covenant, because of the numerous irregularities in his trial (see para. 2.12 above).

3.5 Mr. Kozulin's rights under article 14, paragraph 2, of the Covenant were also violated, as officials publicly referred to him as a criminal, immediately after his arrest.

3.6 The author claims a violation of article 14, paragraph 3 (b), of the Covenant, because Mr. Kozulin was held in a cage during the trial, which affected his communication with counsel.

3.7 She claims a violation of article 14, paragraph 3 (d), since the court did not allow her to represent her father during the trial.

3.8 The author claims a violation of article 14, paragraph 3 (e), because the court refused to call a number of witnesses requested by the defence and was thus unable to examine all relevant evidence.

State party's observations on admissibility and merits

4.1 On 26 May 2008, the State party noted that, on 13 July 2006, the Court of the Moscow District in Minsk found Mr. Kozulin guilty of having committed intentionally acts of hooliganism, seriously breaching the public order, demonstrating open disrespect to the society, with use of violence and destruction of property, and resisting the attempts of officials to stop his acts, committed twice, and sentenced him to five years and six months' imprisonment. On 19 September 2006, the Minsk City Court confirmed that decision.

4.2 The court concluded that, on 17 February 2006, Mr. Kozulin, together with other individuals, was trying to enter the Minsk Congress Hall (the location of the National Press Centre). He used violence against two individuals and insulted another. On 2 March 2006, he broke the framed portrait of the Head of State at the Department of Internal Affairs in the Oktyabrsk District in Minsk. On 25 March 2006, he organized and actively participated in mass actions breaching the public order, ignoring calls by the authorities to stop, which resulted in disruption of the work of a commercial centre and the traffic.

4.3 Mr. Kozulin's claims regarding his allegedly unlawful conviction, deprivation of liberty and persecution on political grounds were not confirmed by the trial court or on appeal. The lawfulness of the conviction was also confirmed under the supervisory review proceedings by the Minsk City Court, the Supreme Court, and the Minsk City Procurator and the Procurator-General's Offices.

4.4 The courts examined the criminal case in an objective and impartial manner. Mr. Kozulin was found guilty of having committed specific crimes, based on credible evidence, without considering his involvement in political/social activities. He cannot be recognized as a political prisoner as he was sentenced for acts constituting offences by a competent court of justice established under the law. No violation of his procedural rights occurred. As a person deprived of liberty, he has the right to receive legal aid and to submit

individually complaints and communications. Thus, the present communication, submitted by his daughter and a lawyer, cannot be accepted for examination by the Committee.

4.5 On 24 June 2008, the State party added that the author's allegations concerning the events of 17 February and 2 and 25 March 2006, and concerning her father's trial were inaccurate and misrepresented facts. The Court of the Moscow District in Minsk found Mr. Kozulin guilty under articles 339 and 341 of the Criminal Code. The court's judgment contains a description of the acts charged and the evidence on the basis of which that conclusion was reached, and gives the reasons of the court for rejecting other evidence.

4.6 The State party qualifies the author's allegations regarding the press conference as incorrect. On 17 February 2006, Mr. Kozulin insisted on holding a press conference at the National Press Centre despite being refused permission to do so. He was not provoked there; he and those accompanying him used force against a guard. Mr. Kozulin personally insulted and humiliated the guard and pushed him, allowing those accompanying him to enter the building. Mr. Kozulin also insulted, humiliated and punched in the face another individual causing him bodily injuries, as confirmed by several witnesses, an expert's conclusions regarding the injuries of the guard and a video recording of the events.

4.7 Mr. Kozulin's allegations that he smashed the President's portrait on 2 March 2006 owing to the treatment to which he was subjected were rejected by the court. Two witnesses, the record of the examination of the scene and a videotape viewed in court show that Mr. Kozulin, in a State institution, in presence of several law enforcement officials, without apparent reason, suddenly broke the glass of the frame. The court established that, before that incident, Mr. Kozulin has not been detained in the police centre for more than seven hours as alleged, but for fewer than 20 minutes, and no unlawful acts had been committed against him whatsoever.

4.8 The court correctly concluded that Mr. Kozulin's acts on 27 February and 2 March 2006 were premeditated and seriously breached the public order, and showed clear disrespect for the society, with use of violence and destruction of others' property, resistance to a person aiming at stopping the acts of hooliganism, committed for a second time.

4.9 The court has further established that, on 25 March 2006, Mr. Kozulin, knowing that no authorization for a meeting/rally has been issued, called upon citizens to march towards the building containing people held for having participated in another unauthorized event. He personally set the example and ignored police warnings. Several individuals testified in court and a videotape of the events showed that the crowd, led by him, marched along the pavement and the street, ignoring the police warnings. The crowd screamed and whistled, disturbing the neighbours and the workers of a company and obstructing pedestrian traffic. On Dzerzhinsky Avenue, the crowd, led by Mr. Kozulin, walked along the lane, obstructing the traffic, ignoring the calls of the police to free up the road. The crowd also resisted the military officers trying to free up the transport lanes, injuring 12 officers. Mr. Kozulin personally destroyed the camera of a police officer.

4.10 Thus, it was correctly concluded under article 342 of the Criminal Code that Mr. Kozulin organized public events and actively participated therein, seriously breaching the public order, accompanied by open non-compliance with lawful requests by officials and disrupting public transport and the work of a company. In determining his sanction, the court took into consideration the nature and the level of public danger of the offences, his motivations, the consequences (injuries of 12 persons on 25 March 2006), data on his personality and the positive assessment from his employer, his scientific achievements and the fact that he has no previous criminal record. As the crimes committed by him relate to a serious breach of the public order, within a short lapse of time, the court correctly decided

that his correction and the prevention of commission of new crimes could only be achieved through isolation from the society.

4.11 According to the State party, the allegations of torture and inhuman/degrading treatment are groundless and refuted by the content of the criminal case's trial transcript. The conditions of the trial were equal for all participants. The criminal procedure law does not provide for a specific outfit for accused persons in court. Mr. Kozulin's attire during the trial was neat and adequate to the season. His request to be offered other clothing was rejected as the accused cannot receive any items in court, including food; he could receive parcels, including clothes, through the detention centre.

4.12 The judiciary was in charge of providing Mr. Kozulin with food during the trial. In court, Mr. Kozulin was offered fresh drinking water in unlimited quantity, but he refused to drink it. Similarly, he refused to take the ration or the warm food offered.

4.13 In court, Mr. Kozulin complained about his poor health; however, medical doctors found him fit to undergo trial. In addition, the pretrial detention centre at which he was kept was equipped with a medical unit which could provide him assistance, but he never sought any care there.

4.14 The author's allegations under article 12 of the Code of Criminal Procedure (respect of honour and dignity), article 25 of the Constitution (personal liberty, dignity) and article 7 of the Covenant are thus groundless.

4.15 During his detention in colony No. 8 to serve his sentence, Mr. Kozulin never complained to the Department on the Execution of Penalties. Prior to that, he was in custody in remand centre No. 1 in Minsk, from 29 June to 21 September 2006. Under article 12 of the law regulating custody, the replies to his complaints were drawn to his attention, and they were added, against his signature, to his file. Upon arrival in the detention centre, he made no complaints about his health, and he was not specifically registered in the medical unit. As of 20 July 2006, he complained to the medical unit about pain in the spine area and about his sight and he was brought to be to the penitentiary hospital of Minsk correctional colony No. 1 for tests. The results were explained to him orally, and he left the hospital in a satisfactory condition. The specialists recommended that he avoid straightening his spine and wear glasses. After his return, he never sought the assistance of the detention centre's medical unit.

4.16 Mr. Kozulin was able to buy basic items, including water in unlimited quantity, at the detention centre's stall. He was offered warm food three times a day. On 11 and 12 June 2006, he received a dry food ration, given his travel to court.

4.17 On 12 April 2006, the Court of the Central District in Minsk confirmed the lawfulness of Mr. Kozulin's arrest on 25 March 2006, and found that his defence rights were not violated. The claims regarding his continuing custody are, according to the State party, also groundless. Under article 277 of the Code of Criminal Procedure, once a case is brought to court, judges also verify whether the preventative measure of an accused must be modified/cancelled. When Mr. Kozulin's criminal case was brought to court, the judge examined his lawyer's request for release, but decided to prolong the custody, by ruling of 28 June 2006.

4.18 The alleged breach of Mr. Kozulin's freedom of assembly, is, according to the State party, based on inaccurate description of the incidents of 25 March 2006. The court established that Mr. Kozulin's acts amounted to the organization of public events, with open disrespect of lawful warnings of the authorities, leading to disruption of the public order and the functioning of the transport and companies, and he had actively participated in those actions, i.e. a crime under article 342, part 1, of the Criminal Code. Such actions cannot be considered as constituting a peaceful assembly, within article 21 of the Covenant.

4.19 Regarding the court's refusal to allow the author to represent her father, article 44, part 3, of the Code of Criminal Procedure gives courts a right, not an obligation, to allow a relative as representative. Mr. Kozulin was represented in court by two defence lawyers; his daughter was not an attorney. Accordingly, his right to defence was not violated and the refusal to allow his daughter to represent him was lawful. The State party further rejects as groundless the allegations that Mr. Kozulin's right to prepare his defence and communicate with his lawyers was limited. At the end of the preliminary investigation, he and his lawyers acquainted themselves with the criminal case file's content and could prepare, either collectively or individually. They had the same opportunity throughout the trial, and they used it without limitations.

4.20 As Mr. Kozulin was kept in pretrial detention, and during the trial and the breaks, he was placed in specially designated places for the accused.

4.21 The author's allegations regarding the breach of the equality of arms in court and the breach of Mr. Kozulin's right to call witnesses are, according to the State party, also groundless. The court, as obliged by the law, examined all requests made by the parties and provided reasoned replies. Throughout the trial, the parties were provided with equal rights regarding retention of evidence. The court took measures to have injured parties and witnesses called to the courtroom. The Code of Criminal Procedure permits the trial to proceed in the absence of an injured party. Where it is impossible to have an injured party present, the court may ask that the injured party's prior depositions to be read out (art. 333 of the Code of Criminal Procedure). Witnesses who had appeared in court at the initiative of the parties were questioned. Requests to call witnesses regarding circumstances unrelated to the criminal case in question were rejected by the court.

4.22 The State party rejects the allegations concerning the publicity of the trial and those regarding the guarantees to be tried by a competent, independent and impartial tribunal, and notes that the trial took place at the Moscow District Court in Minsk, in its biggest court room equipped with a large number of seats; the trial was public. All diplomats, journalists, and Mr. Kozulin's relatives had access. Other individuals were also allowed to enter the room, subject to availability of seats. Everyone could take notes or make audio records. Given the large number of individuals in the courtroom, and in order to assure normal conduct of work for the parties, the presiding judge refused to allow pictures or videos to be taken. Article 287, part 6, of the Code of Criminal Procedure allows pictures, filming or video recordings only with the agreement of the judge and the acceptance of the parties. All requests were duly examined by the court; their large number does not demonstrate that they were substantiated. The rejected requests concerned the establishment of circumstances falling outside of the scope of the trial, which, in accordance with article 301, part 1, of the Code of Criminal Procedure, relates exclusively to the accused and is limited to the charges faced. All well-reasoned requests by Mr. Kozulin and the other participants were satisfied.

4.23 The need to comply with the rules was explained to all parties of the trial and the individuals present in the courtroom by the court and they were warned about their responsibility under article 307 of the Code of Criminal Procedure (measures regarding the violation of the order in a court meeting). Nevertheless, individuals committed violations and ignored the lawful requests made by the presiding judge. As a result, they were ordered out of the room.

4.24 Mr. Kozulin was warned on more than ten occasions (orally) and four occasions with an official record in the trial transcript that he may be requested to quit the room if he did not respect the court's injunctions or the rules, in particular by making statements without having been given the floor, or offensive remarks against the judges or the prosecution. He disregarded the warnings and had to leave on two occasions. He was ruled out of the room at the end of the deliberations and had no opportunity to make a final

intervention before the pronouncement of the judgment. When the judgment was to be read out, in violation of article 365 of the Code of Criminal Procedure, he refused to stand up, and started talking loudly, disturbing the court. For that reason, Mr. Kozulin was removed from the room for the second time and the judgment was pronounced in his absence. Given that those present in the room were also speaking loudly, they were also removed from the room by the court. The judgement was thus read out in the presence of Mr. Kozulin's defence lawyers, the prosecutor and a foreign diplomat. Article 307, parts 1 and 2, of the Code of Criminal Procedure permit the removal from the room of accused and the pronouncement of a judgment in his/her absence. However, the accused has to be provided with a copy of the judgment, against signature, immediately after its pronouncement; it was done in this case.

4.25 The alleged violations of the law when the case was examined on cassation are, according to the State party, also groundless. The law in force did not provide for a compulsory presence of the accused when his/her cassation appeal is examined. No official audio recording was made at the trial court stages as the court did not consider the issue and, therefore, no such record could be provided to the cassation court. A trial transcript detailing the conduct of the trial was prepared, and the annotations on it made during the prescribed deadlines were considered by the court.

4.26 The allegation that Mr. Kozulin suffered inhumane treatment in court is groundless. He was transferred to serve his sentence within the established deadlines. The legislation in place does not provide for courts to authorize visits by foreign diplomats to the accused.

4.27 Individuals must be transferred to a penitentiary institution within 10 days of conviction; that was respected in the present case. The fact that Mr. Kozulin could not see his relatives beforehand does not violate the law.

4.28 In the correctional colony No. 3 (Vitebsk region), Mr. Kozulin was allowed to meet with his lawyer on 24 occasions. During his hunger strike, he was not allowed to meet with his lawyer, as the penitentiary administration took into consideration his state of health.

4.29 Mr. Kozulin met with the Head of the Organization for Security and Cooperation in Europe Office in Belarus on 31 October 2006, 20 December 2006 and 20 April 2007. He met with a foreign ambassador on 20 April 2007 and with a foreign medical doctor, at the doctor's request, on 30 January 2008.

4.30 The State party notes that the hunger strike took place from 20 October to 11 December 2006. On 31 October, Mr. Kozulin confirmed in writing that he did not wish to be kept in the medical unit of the penitentiary colony. His state of health was monitored on a daily basis by the medical unit's doctors and he had laboratory tests periodically. The consequences that his hunger strike may have for him were repeatedly explained to him, but he refused any kind of medical help or hospitalization, affirming that he would decide whether to stop. On 27 November 2006, he was examined by a group of medical specialists composed of the Head of the Penitentiary Medical Service, the chief of the correctional colony's No. 3 medical unit, and two medical doctors from correctional colony No. 1. On 29 December 2006, he was brought for examinations and tests to the Vitebsk Regional Hospital. The examination revealed no condition affecting his kidneys although the effects of hunger were visible.

4.31 Mr. Kozulin refused in writing, on four occasions, to undergo a comprehensive medical examination in the penitentiary hospital of Minsk correctional colony No.1. Following the end of his hunger strike, he was examined comprehensively on a regular basis. In the light of the stabilization of his body weight and the blood test results, the medical doctors decided, on 31 March 2008, to stop providing him with a special diet. His state of health is considered to be satisfactory. He has received seven parcels since his imprisonment.

4.32 Mr. Kozulin was not isolated but held together with 77 other prisoners; the compound is equipped with a television receiver, DVD player and a radio. Practically all detainees in the unit are released early, on bail or owing to the substitution of their sanction by a lighter one.

4.33 Mr. Kozulin has breached the detention regulations on 12 occasions, he was disciplined 4 times and in 8 cases he was given a warning. The sanctions imposed were appropriate to the gravity of the transgressions. On 24 January 2008, he was accused of having maliciously breached the rules regarding execution of penalties; he refused to sign an undertaking of law-abiding behaviour and, in that context, on 30 January 2008, the administration refused to modify his sanction to a lighter one.

4.34 Regarding the alleged unlawful acts by law enforcement personnel and other officials against Mr. Kozulin in the context of the presidential election and its preparation, the State party explains that, in 2006, Mr. Kozulin and his representative complained three times. On 2 March 2006, one of his representatives complained to the Procurator's Office of the Moscow District in Minsk about individuals obstructing the registration of Mr. Kozulin to the third All Belarusian People's Assembly and for having used physical force against him. The verification carried out showed that, at 9 a.m. on 2 March 2006, Mr. Kozulin went to the House of the Railway Workers during the registration of the participants of the national assembly and asked to be registered as a delegate. His registration was refused and it was explained to him that his request was groundless. In reply, Mr. Kozulin, deliberately pushing the individuals present, attempted to provoke an argument with the registration commission. In order to prevent that, officers of the Almaz elite anti-terrorism unit of the Ministry of Interior in charge of security, decided to have Mr. Kozulin and those accompanying him removed from the building. As the latter refused to follow their requests and given their active disobedience, the officers used physical force. Mr. Kozulin was brought to the Department of Internal Affairs of the Oktyabrsk District of Minsk, where he, driven by hooliganism, deliberately smashed a portrait of the Belarusian President. A preliminary investigation was opened against Mr. Kozulin for hooliganism. In the light thereof, the Procurator's Office of the Moscow District in Minsk rejected Mr. Kozulin's representative's complaint of 2 March 2006 regarding the Almaz unit, for absence of corpus delicti in the officers' acts.

4.35 The lawyer complained to the Lenin District's Procurator's Office in Minsk on 11 May 2006, claiming that the police and the wardens of the Minsk Congress Hall unlawfully used physical force and special means (defence spray) against Mr. Kozulin and those accompanying him when they tried to hold a press conference. Verification established that, on 16 February 2006, the National Press Centre received a communication from the initiative committee supporting Mr. Kozulin's standing for president, with a request to conduct a press conference on 17 February 2006 at the Minsk Congress Hall. The request was considered and rejected and those concerned were duly notified. Nevertheless, at 4.30 p.m. on 17 February 2006, Mr. Kozulin, accompanied by a group of people, entered the hall by force. They ignored the warnings of the wardens and of a police officer and refused to leave. Mr. Kozulin personally threatened officers in charge of the protection of the public order and humiliated them using violence. The Minsk city police was called; it intervened and lawfully used force against Mr. Kozulin and the group, with use of a protection spray against one individual. On 25 April 2006, the Lenin District Procurator's Office in Minsk refused to open a criminal case against the wardens and the police officers involved, in absence of corpus delicti.

4.36 On 13 April 2006, Mr. Kozulin complained to the Zavodsky District's Procurator's Office about the use of force against him by the police and the Almaz unit. Verification showed that, on 25 March 2006, he had organized an unauthorized meeting and incited those attending to walk towards a government office to demonstrate. Mr. Kozulin ignored

the warnings of officials and led the group towards the office. The participants in the unauthorized march breached the public order and transport, obstructed the circulation of pedestrians and functioning of businesses and disobeyed law enforcement officers attempting to interrupt them. Mr. Kozulin wilfully destroyed a video camera used by a police officer filming. Around 4.30 p.m., Mr. Kozulin was apprehended by officers of the Almaz unit and police officers. He refused to follow their instructions and attempted to hit officers and, as a result, lawfully, physical force had to be used against him. Following his arrest, he was brought to the department of the Ministry of Internal Affairs of the Zavodsky District in Minsk for further investigation regarding a criminal case opened on the same day under article 342 of the Criminal Code (organization of events, seriously breaching the public order).

4.37 Following verification, the Zavodsky District Procurator's Office rejected Mr. Kozulin's complaint of 13 April 2006. No other complaints were made by him or his representatives with the procurator's office regarding the actions of the police.

Author's comments on the State party's observations

5.1 On 8 August 2008, the author notes first that, on 26 May 2008, the State party only affirms that the legality of Mr. Kozulin's conviction was verified on cassation and supervisory review appeals.

5.2 Regarding the State party's observations of 24 June 2008, she explains that they mainly refer to the content of the judgment and to domestic law provisions, without adducing documents or new argumentation, and they distort the facts. She reiterates her claims. In her view, the State party refers to facts not established by the courts, such as her father's unlawful intrusion into the press centre, the destruction of the presidential portrait or his calls upon citizens to join the demonstration and their obstruction of traffic during their protest.

5.3 The author affirms that the State party failed to justify the legality of Mr. Kozulin's arrest and custody, and was unable to refute her allegations that the restrictive provisions of domestic law discriminate against citizens and prevent them from enjoying their rights to peaceful assembly. Local authorities, supported by governmental forces, continuously violate article 21 of the Covenant.

5.4 The author disagrees with the State party's statement that there was no larger courtroom available and contends that such arguments are used often in high-profile cases. Moreover, the court based its refusal to allow pictures or video recordings on the fact that the courtroom was overcrowded. Such an argument is inconsistent with the principles of transparency and accountability of the judiciary, according to the author.

5.5 During the trial, her father was escorted out of the courtroom several times after objecting to statements made by officials. Despite his social and professional status, he was ordered to leave the courtroom during the last minutes of his trial.

5.6 She adds that her father never received qualified medical care in prison. The State party failed to explain why the penitentiary administration dismissed all of his requests for independent medical examinations, such as by the representatives of the International Committee of the Red Cross.

State party's additional observations

6.1 On 14 October 2008, the State party explains that the procedural irregularity regarding the present communication (i.e., its submission by the author rather than by Mr. Kozulin) remains unrepaired, and the author has further submitted comments on the State party's observations. It adds that based on that lack of seriousness and respect on the

part of the authors, it is not in a position to recognize the validity and legitimacy of either the communication or the additional information submitted.

6.2 It explains that, on humanitarian grounds, on 16 August 2008, Mr. Kozulin was released by Presidential Decree and contends that the author has omitted that fact on purpose, in an attempt to deprive the Committee of full information and have an objective consideration of the case. Thus, the author continues to exert pressure on the Committee by submitting subjective and politically motivated assessments regarding Mr. Kozulin's imprisonment, extraneous to the substance of the case. It interprets the author's actions as an abuse of the right of submission and invites the Committee to declare the case inadmissible.

Additional submission from the alleged victim

7.1 On 24 March 2009, Mr. Kozulin commented on the State party's observations of 14 October 2008.

7.2 He notes that it remains uncontested that, on 2 March 2006 he was arrested by officers in plain clothes, without explanation. It remains also unrefuted that, on 25 March 2006, he was detained for more than 20 hours without the possibility of contacting his counsel or family; the legality of the decision to keep him in custody on 25 March 2006 was taken on 12 April 2006, i.e. a court endorsed his detention 18 days after his actual apprehension.

7.3 He notes that the State party has failed to prove that the 25 March 2006 gathering was not peaceful or that it breached the public order, or to explain why the Minister of Internal Affairs' statement on the same day, designating him as a culprit, was broadcast on a public television station.

7.4 He believes that the State party failed to present sufficient arguments regarding the fact that, during five hot summer days of court hearings, he was denied fresh water. Moreover, the court dismissed his motions to summon additional witnesses.

7.5 He finally notes that the State party did not prove its full commitment to providing him with adequate medical care. During his detention, he suffered from hyperaemia, pain and other signs of inflammation as he was frequently handcuffed. In addition, during his hunger strike, his state of health deteriorated but he could not communicate with his counsel.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Human Rights Committee must determine whether it is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights.

8.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes first the State party's objection regarding the acceptance for examination of the present communication, as it was not submitted by the alleged victim. It notes the author's explanation, provided when submitting the case, that the penitentiary administration prevented Mr. Kozulin from preparing a power of attorney. It also notes that, subsequently, Mr. Kozulin has submitted duly signed comments to the State party's observations on admissibility and merits of the communication, thus confirming his interest

in continuing with the case. In the circumstances, the Committee concludes that it is not prevented from examining the present communication on the grounds mentioned.

8.4 As to the claim under article 10 of the Covenant, that owing to his expeditious transfer to a penitentiary colony, Mr. Kozulin was unable to see his parents, the Committee notes the State party's observations that the transfer in question was carried out within the relevant deadlines set out by law. The Committee considers that this part of the communication is insufficiently substantiated, for purposes of admissibility and declares it inadmissible under article 2 of the Optional Protocol.

8.5 Regarding the author's claim that, in violation of article 14, paragraph 3 (b), she was not allowed to act as her father's representative, the Committee notes the State party's explanation that her father was represented by two professional attorneys and that courts decide whether to allow a relative to represent an accused. In those circumstances, the Committee considers that this part of the communication is inadmissible under article 2 of the Optional Protocol as insufficiently substantiated.

8.6 The Committee notes the author's claim under article 14, paragraph 3 (e), of the Covenant, that the court failed to call several witnesses, without however providing detailed explanations thereon. It also notes the State party's explanation that all requests by the parties were examined by the court and given grounded replies. In the circumstances, the Committee finds this part of the communication insufficiently substantiated and inadmissible under article 2 of the Optional Protocol.

8.7 The Committee considers that the remaining author's claims, raising issues under articles 7; 9, paragraphs 1 and 3; 10; 14, paragraphs 1, 2 and 3 (b); and 21 of the Covenant, have been sufficiently substantiated for purposes of admissibility, declares them admissible and proceeds with their examination on the merits.

Consideration of the merits

9.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5, paragraph 1, of the Optional Protocol.

9.2 The author has claimed that her father was beaten and ill-treated by police and special forces officers on 2 and 26 March 2006, when he was trying to participate in the meeting of the All Belarusian People's Assembly and in a gathering in support of arrested protesters, respectively. She explains that, on 3 March 2006, her father was examined by a medical expert and several haematomas were revealed on his body. She also claims that all complaints made on her father's behalf in that connection were rejected, and that in court, when questioned, officials contended that he had inflicted his injuries himself. The Committee notes that the State party has rejected the author's allegations as groundless, responding that police and special forces have used physical force against Mr. Kozulin lawfully given his refusal to comply with their orders.[6] The State party also noted that these allegations were verified by its competent authorities and were not confirmed.

9.3 The Committee recalls that a State party is responsible for the security of any person it detains and, when an individual claims to have received injuries while in detention, it is incumbent on the State party to produce evidence refuting those allegations.[7] Moreover, when a complaint about ill-treatment contrary to article 7 has been filed, a State party must

[6] See paras. 4.35–4.40 above.

[7] Communication No. 1412/2005, *Butovenko* v. *Ukraine*, Views adopted on 19 July 2011, para. 7.5.

investigate it promptly and impartially.[8] The Committee considers that, in view of the submissions of the State party and the decisions of the State party's courts, and the limited information and documents presented by the author, including the limited information concerning the investigations carried out by the State party, the Committee is not in a position to conclude that the State party's authorities inflicted treatment inconsistent with article 7 of the Covenant on Mr. Kozulin on either 2 March 2006 or 25 March 2006.

9.4 For similar reasons, the Committee is not in a position to conclude that the circumstances of Mr. Kozulin's arrest amounted to a violation of his right of peaceful assembly under article 21 of the Covenant.

9.5 The Committee notes the author's allegations regarding the conditions under which Mr. Kozulin was held after his conviction. The Committee also notes that, although the State party denies some of those allegations, it admits that its prison authorities denied Mr. Kozulin access to his counsel and to independent medical expertise as requested during his 53-day hunger strike, a time when he particularly needed it. The State party contends that depriving him of such access was justified by health reasons, without, however, providing any explanations or evidence to support that argument. In the particular circumstances of the present case, the Committee considers that the prison authorities did not provide humane treatment to Mr. Kozulin, and concludes that the State party violated article 10 of the Covenant.

9.6 The author also claims that Mr. Kozulin's arrest of 25 March 2006 was unlawful, his family was informed about his whereabouts only after 19 hours, instead of the 12 hours prescribed by law, his subsequent pretrial detention was unjustified and was sanctioned by a procurator, and a judge confirmed his placement in custody only after 18 days had passed, in violation of article 9, paragraphs 1 and 3, of the Covenant. It notes that the State party has explained that, on 12 April 2006, the Court of the Central District in Minsk confirmed the lawfulness of Mr. Kozulin's arrest of 25 March 2006, and its contention that those claims are groundless.

9.7 The Committee recalls that detention pending trial must be based on an individualized determination that it is reasonable and necessary in all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime, and courts must examine whether alternatives to pretrial detention would render detention unnecessary in the particular case.[9] The Committee observes that the State party has failed to explain why, in the light of the facts of this particular case, it was necessary to keep Mr. Kozulin in custody prior to and during his trial. The Committee further notes that the pretrial custody was imposed on 25 March 2006 by decision of a prosecutor, and was not approved by a court until 12 April 2006. The Committee recalls its established jurisprudence that paragraph 3 of article 9 entitles a detained person charged with a criminal offence to be brought promptly within judicial control of his/her detention.[10] It is inherent in the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. The Committee

[8] See the Committee's general comment No. 20, para. 14, and, for example, communication No. 1589/2007, *Gapirjanov* v. *Uzbekistan*, Views adopted on 18 March 2010, para. 8.3.

[9] See communications No. 1369/2010, *Kulov* v. *Kyrgyzstan*, Views adopted on 26 July 2010, para. 8.3; No. 1940/2010, *Cedeño* v. *Bolivarian Republic of Venezuela*, Views adopted on 29 October 2012, para. 7.10; No. 1178/2003, *Smantser* v. *Belarus*, Views adopted on 23 October 2008, para. 10.3.

[10] See, for example, communications No. 521/1992, *Kulomin* v. *Hungary*, Views adopted on 22 March 1996, para. 11.3; No. 1218/2003, *Platonov* v. *Russian Federation*, Views adopted on 1 November 2005, para. 7.2; No. 1348/2005, *Ashurov* v. *Tajikistan*, Views adopted on 20 March 2007, para. 6.5; No. 1769/2008, *Ismailov* v. *Uzbekistan*, Views adopted on 25 March 2011, para. 7.3; and No. 1787/2008, *Kovsh* v. *Belarus*, Views of 27 March 2013, para. 7.3.

is not satisfied that the public prosecutor can be characterized as having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3. The Committee concludes, therefore, that the facts as submitted reveal a violation of articles 9, paragraphs 1 and 3, of the Covenant.

9.8 The author claims that her father was placed in a cage during the trial, and could thus not properly communicate with his lawyers in court, and that his right to be presumed innocent was violated, also because the Minister of Interior has designated him as a culprit, on a public television station immediately after his arrest, and the Procurator-General's Office issued a similar statement on the same day. The State party has not addressed these issues in detail but has merely contended that no violation of Mr. Kozulin's defence rights occurred throughout the proceedings. The Committee recalls that the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.[11] Defendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.[12] The media should avoid news coverage undermining the presumption of innocence.[13] In the circumstances, and in the absence of any other pertinent information on file, the Committee gives due weight to the author's allegations. Accordingly, it concludes that the facts as presented reveal a violation of Mr. Kozulin's right to a fair trial under article 14, paragraphs 1 and 2, of the Covenant. Having reached this conclusion, the Committee decides not to examine separately the remaining grounds invoked by the author under article 14, paragraphs 1 and 3 (b), of the Covenant.

10. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the State party has violated Mr. Kozulin's rights under articles 9, paragraphs 1 and 3; 10; and 14, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights.

11. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Kozulin with an effective remedy, including adequate compensation for the violations found, together with reimbursement of any legal costs incurred. The State party is also under the obligation to take steps to prevent similar violations in the future.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to

[11] See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 30.

[12] Ibid., para. 30; communications No. 1405/2005, *Pustovoit* v. *Ukraine*, Views adopted on 20 March 2014, paras. 9.2 and 9.3; No. 2120/2011, *Kovaleva and Kozyar* v. *Belarus*, Views adopted on 29 October 2012, para. 11.4.

[13] See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views, and to have them widely disseminated in Belarusian and Russian in the State party.

Appendix

[Original: English]

Separate opinion of Committee member Cornelis Flinterman

1. I fully concur with the reasoning and the views of the Committee in the present case except on one important point where the Committee concludes that it is not in a position to conclude that the inflicted treatment on Mr. Kozulin by the State party's authorities is inconsistent with article 7 of the Covenant. This conclusion is based on the submissions of the State party and the decisions of the State party's courts, and on the limited information and documents presented by the author, including the limited information concerning the investigations carried out by the State party (see para. 9.3).

2. I respectfully disagree with this conclusion. It is uncontested between the parties that physical force has been used by the police and the special forces of the State party against Mr. Kozulin. The author has precisely described the nature of this "physical force". The Committee seems to require from the author that she should have given the Committee sufficient information about the investigations carried out by the State party on this matter. This is unreasonable. The Committee has time and again held that its incumbent on the State party to produce evidence to refute allegations of ill-treatment received by an individual while in detention. Moreover, when a complaint about ill-treatment contrary to article 7 has been filed, a State party must investigate it promptly and impartially.

3. In paragraph 9.2 the Committee notes itself that the State party simply rejects the author's allegations as groundless and that it merely argues that physical force had been used against Mr. Kozulin because he refused to comply with the orders of the State party's authorities. In the same paragraph the Committee refers to the statement by the State party that the allegations of ill-treatment of Mr. Kozulin were verified by its competent authorities and were not confirmed.

4. I cannot consider that the information and documents as presented permit the conclusion that the State party's authorities have given due and adequate consideration to the alleged victim's complaints of ill-treatment, made during the preliminary investigation and in court. In such circumstances, and in the absence of any other relevant information, I conclude that the facts before the Committee amount to a violation of Mr. Kozulin's rights under article 7 of the Covenant. The obligations of States parties under article 7 of the Covenant should be scrupulously be upheld by the Committee.